

STATEMENT OF PROCEEDINGS
REGULAR MEETING OF THE AIR POLLUTION CONTROL BOARD
SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT
WEDNESDAY, DECEMBER 15, 1999

Meeting was called to order at 9:15 a.m.

Present: Members Pam Slater, Chairwoman; Vice Chairwoman Dianne Jacob; Greg Cox; Ron Roberts and Bill Horn; also Thomas J. Pastuszka, Clerk.

Approval of Statement of Proceedings/Minutes for meeting of November 17, 1999.

ACTION:

ON MOTION of Member Horn, seconded by Member Roberts, the Board of Supervisors approved the minutes for the meeting of November 17, 1999.

AYES: Cox, Jacob, Slater, Roberts, Horn

Public Communication
(No Speakers)

Air Pollution Control Board Agenda Items

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1. Noticed Public Hearing:
1998 Air Toxics "Hot Spots" Program Report for San Diego County
 2. 1999 Carl Moyer Program Funding Allocation
(4 VOTES)
 3. Continued Noticed Public Hearing:
Adoption of New Rule 6 - Minor Violations
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APCD 1. **SUBJECT: NOTICED PUBLIC HEARING:
1998 AIR TOXICS "HOT SPOTS" PROGRAM REPORT FOR
SAN DIEGO COUNTY**
(Supv. Dist: All)

OVERVIEW:

The California Air Toxics "Hot Spots" Information and Assessment Act is a state-mandated program enacted in 1987. The purpose is to evaluate emissions of toxic air contaminants, determine what emissions, if any, present public health concerns, notify affected members of the public, and reduce significant risks. The Air Resources Board (ARB) is responsible for evaluating emissions from mobile, area, and natural sources; the District for evaluating emissions from stationary sources.

District Rule 1210 (Toxic Air Contaminant Public Health Risks - Public Notification and Risk Reduction) specifies the public notification and health risk reduction criteria for the "Hot Spots" program. Facilities with estimated cancer risks above 10 in one million or non-cancer risks above levels recommended by the state Office of Environmental Health Hazard Assessment (OEHHA) must provide direct mail notices to impacted residents, businesses, schools, and other specified locations. Facilities with estimated cancer risks above 100 in one million or non-cancer risks above levels recommended by OEHHA must develop and implement a plan to reduce risks below these significant risk levels, generally within five years.

To date, emissions of toxic air contaminants have been quantified for approximately 1,800 local facilities under this program. Public health risk assessments were conducted for 54 larger emitting facilities prior to 1997 because of the amount and type of toxic air contaminants they emitted. Eight of these were required to notify impacted residents and businesses because they had estimated maximum cancer risks above 10 in one million and/or non-cancer health risks above levels recommended by OEHHA. These notifications occurred in late 1997. Two facilities (Chem-tronics, Inc., in El Cajon and U.S. Navy Amphibious Base in Coronado) had significant non-cancer risks and were required to develop and implement risk reduction plans. As a result, both facilities significantly reduced emissions of toxic air contaminants and associated public health risks over the past two years. Chem-tronics reduced their emissions of sodium hydroxide by 99 percent, essentially eliminated perchloroethylene emissions from maskant operations, and reduced toxic emissions from metal spraying operations by 99 percent. The U.S. Navy Amphibious Base reformulated coatings and reduced reported emissions to reduce xylene emissions by 33 percent.

In 1997, nine additional facilities were identified as needing health risk assessments based on the most current approved toxic air contaminant inventory data. Risk assessments were prepared during this past year for these nine intermediate and small facilities and are currently under District and OEHHA review. These assessments will likely result in additional public notifications and mandatory risk reduction measures.

Emissions of toxic air contaminants from industrial sources inventoried for the years 1993-1995 have been reduced by approximately 2,560 tons per year (50%)¹ (Based on a comparison between the results of the first emissions inventory and the second, adjusted for contaminants not inventoried in the first inventory but added to the list of compounds to be reported in the second inventory (see Attachment I-A)) since the initial 1989-1991 estimates (Attachment I-A). Data on reductions in emissions from mobile, area, and natural sources since 1989 are not available from ARB. A listing of business-specific emission reductions implemented since the program's inception is provided in Attachment I-B.

Public health risks estimated for many industrial sources evaluated under this program have declined substantially. Attachment I-C compares health risk assessment results for larger facilities based on 1989 emissions to those based on 1993 emissions. In nearly all cases, the maximum estimated cancer and non-cancer risks have declined, some significantly. While it is not appropriate (due to variables such as where and how emissions occur, the toxicity of particular contaminants, and the location of impacted areas) to directly relate reduced industrial emissions and public health risks, the declining trends for industrial toxic air emissions and risk assessment results are encouraging.

State law requires the District to publish an annual report summarizing program efforts and results. Attachment II is the 1998 report consisting of Volumes I and II. About 14,100 tons of toxic air contaminants are emitted annually in San Diego County from all sources. Automobiles and other mobile sources emit approximately 7,500 tons (53%), inventoried industrial sources emit 3,800 tons (27%), and area and natural sources emit 2,800 tons (20%).

The declining emissions trends are supported by declining ambient levels of toxic air contaminants. Ambient levels of toxic air contaminants are the result of emissions from all sources, including motor vehicles. The overall cancer risk from measured ambient levels of air toxics has declined by more than 40% between 1990 and 1998, including declines in benzene (down 72%), butadiene (down 45%), and hexavalent chromium (down 62%).

A public workshop on the 1998 Air Toxics "Hot Spots" Program Report was held on September 23, 1999. A workshop report is provided as Attachment III.

The Air Pollution Control Board is required to hold a public hearing on the 1998 program report. If approved, the District will disseminate the report to city councils, local health officials, and other interested persons. The Board approved the 1997 Air Toxics "Hot Spot" Program Report on September 23, 1998 (Item #3).

FISCAL IMPACT:

Approval of the 1998 report will have no fiscal impact on the District.

RECOMMENDATION:

AIR POLLUTION CONTROL OFFICER:

Consider the 1998 Air Toxics "Hot Spots" Program Report and approve the report for public distribution.

ACTION:

ON MOTION of Member Roberts, seconded by Member Cox, the Members of the Air Pollution Control Board closed the Hearing and took action as recommended.

AYES: Cox, Jacob, Slater, Roberts, Horn

APCD 2. **SUBJECT: 1999 CARL MOYER PROGRAM FUNDING ALLOCATION**
(Supv. Dist: All)

OVERVIEW:

The Carl Moyer Program (Moyer) was created by the Legislature in the FY 98/99 state budget. Twenty-five million dollars were appropriated for heavy-duty diesel engine replacement incentives. Heavy-duty diesel engines are high emitters of nitrogen oxides (NOx), a precursor to ozone, and particulate matter. Particulate matter emissions from diesel engines have been identified by the California Air Resources Board (ARB) as a toxic air contaminant. The Moyer program is intended to reduce emissions from heavy-duty vehicles by providing incentives to replace older, high-emitting diesel engines with newer, cleaner engines. Heavy-duty engine emission reduction has been identified as one of the most cost-effective air quality strategies available.

The Governor directed the ARB to develop guidelines, administer the program, and allocate funds to air districts. San Diego was allocated \$1,085,661 in first year funding and has tentatively been allocated \$823,148 in second year funding, totaling \$1,908,809. To receive funds, districts must agree to implement the program consistent with ARB guidelines. Your Board authorized the District to apply for Moyer funds on December 16, 1998 (APCB Item #6).

On May 4, 1999, the District issued a Request for Applications for eligible projects. Twenty-three projects were received from eleven applicants requesting more than \$5 million in funding. ARB guidelines specify six categories of diesel engine projects eligible for Moyer funding: on-road, off-road, locomotive, marine, stationary source, and other (e.g., forklifts). Only the incremental cost associated with each project is eligible for funding. Applications were received in three of the six categories: on-road, off-road, and marine projects. It was determined that only projects in the on-road and marine categories were eligible under the guidelines. A summary of each proposed project is included in Attachment I.

Table 1 lists projects recommended for funding by funding year. Table 2 lists all projects submitted including the funding amount requested, amount eligible, amount recommended, and cost-effectiveness.

The District requests Board approval to appropriate \$1,881,980 from Moyer funding and submit the recommended projects to the ARB for approval. The District selected projects based on cost-effectiveness, available funding, and the Board's previously indicated interest in funding school bus projects and recommends funding: 66 CNG transit buses (North County Transit District - 16, MTDB - 50), 8 CNG school buses (Oceanside School District - 5, Chula Vista School District - 3), two harbor excursion boats (San Diego Harbor Excursions), ten fishing boats (Seaboard Marine), and one utility work boat (Port of San Diego). The District has requested the remainder of the ARB allocation (\$26,829) be carried over to supplement the District's third year Moyer funding.

Because of the high cost-effectiveness of these projects, it is also recommended that first and anticipated second year Moyer funds be appropriated at this time. This will allow the region to benefit immediately from the additional projects' emission reductions. If not, several very cost-effective projects would not be funded at this time. The ARB has indicated that second year funding will be available to the District in February 2000. Also, ARB will be monitoring air districts closely to ensure Moyer funds are expended expeditiously.

Board authorization is also requested to enter into contracts between the District and selected project applicants once the ARB gives final project approval. Contracts are necessary to ensure projects are implemented as proposed and to document monitoring and reporting requirements agreed to by both parties. Contracts for second year Moyer-funded projects will not be entered into until funding has been approved by ARB.

FISCAL IMPACT:

The recommended action will allow the District to receive \$1,881,980 allocated from the FY 1998-99 and 1999-00 Carl Moyer Program to fund projects reducing pollution from heavy-duty engines. There is no net County cost associated with this action.

RECOMMENDATION:

AIR POLLUTION CONTROL OFFICER:

1. Approve the recommended 1999 and 2000 Carl Moyer Program projects and authorize the Air Pollution Control Officer to apply for second year Moyer funding, and forward project applications to the California Air Resources Board for final approval.
2. Establish appropriations of \$1,881,980 in the Air Pollution Control District for the Carl Moyer Program based on unanticipated revenue from the Air Resources Board. (4 VOTES)
3. Authorize the Deputy Director, Purchasing and Contracting Division of General Services, in accordance with 398.17(a) of the County Administrative Code, to negotiate and award contracts for the recommended 1999 and 2000 Carl Moyer Program projects on behalf of the San Diego Air Pollution Control District subject to the approval of the Air Pollution Control Officer.

ACTION:

ON MOTION of Member Horn, seconded by Member Jacob, the Members of the Air Pollution Control Board took action as recommended.

AYES: Cox, Jacob, Slater, Roberts, Horn

APCD 3. **SUBJECT: CONTINUED NOTICED PUBLIC HEARING:
ADOPTION OF NEW RULE 6 - MINOR VIOLATIONS**
(Supv. Dist: All)

OVERVIEW:

Currently, noncompliance with air pollution control requirements leads to issuance of a Notice to Comply or a Notice of Violation. A Notice to Comply is issued for minor violations and there are no associated penalties. A Notice of Violation is issued for non-minor violations and there are a number of possible actions associated with it including civil, criminal, and administrative. Almost all such violations are processed through the District's Mutual Settlement program where monetary penalties are settled directly with the District. For a small number of serious cases, a violation may be referred to the District Attorney or City Attorney for criminal prosecution.

Proposed new Rule 6 implements state law requiring air districts to formally adopt a rule defining minor violations for which a Notice to Comply rather than a Notice of Violation will be issued. In accordance with state requirements, there are no civil, criminal, or administrative penalties associated with a Notice to Comply if the violation is corrected within a time period determined on a case-by-case basis not to exceed 30 days. If a person fails to comply within the specified time period, the District may take appropriate enforcement action.

State law specifies that defining a minor violation requires considering the magnitude and severity of the violation and the degree to which the violation puts human health, safety or welfare, or the environment in jeopardy. The degree to which the violation could hinder accomplishing an air quality goal or determining compliance with other air quality requirements must also be considered.

The District has an existing Notice to Comply program that has worked well and allows a Notice to Comply to be issued for one minor violation of a given type provided a Notice to Comply has not been issued for the same or similar type of minor violation within the previous 36 months. A business could receive more than one Notice to Comply in a 36-month period provided the minor violations were all of a different type (e.g., open paint containers, cold solvent cleaner left uncovered, etc.). Violations resulting in very small emissions (including toxic air contaminants) are considered minor violations. All current minor violations are included in Rule 6 along with the many additional ones listed in Table I-A.

Rule 6 lists specific administrative (e.g., failure to apply for a change of ownership) and de minimis (e.g., open paint container) emissions violations as minor violations. De minimis emissions are defined as a trivial, or very small, amount of emissions as determined by the District. Since it is possible there may be other types of de minimis emission (including toxic air contaminants) violations not yet identified that could qualify as minor violations, and there is no satisfactory way to establish specific de minimis levels for all such violations, the District will determine other de minimis emissions violations on a case-by-case basis. Table I-B lists the minor violations specified in the rule as eligible for a Notice to Comply. Violation types not eligible as minor violations are listed in Table I-C.

The rule is designed not to encourage or provide an incentive to businesses to increase violations by requiring there be no violations of the same or similar type for 36 months or the last three inspection cycles, whichever occurs first, in order to be eligible for a Notice to Comply. More than one Notice to Comply can be issued if each minor violation is of a different type. A subsequent minor violation of the same or similar type within this time period would not be considered minor and a Notice of Violation would be issued. Accordingly, businesses will not be able to relax compliance efforts and still meet the criteria for a Notice to Comply.

The District issued 924 Notices to Comply in fiscal year 1998-99 and expects this number to increase to about 1000 under new Rule 6.

FISCAL IMPACT:

Adopting Rule 6 will result in an inconsequential revenue reduction from civil penalties paid for Notices of Violation that will now become Notices to Comply.

BUSINESS IMPACT STATEMENT:

Rule 6 will allow businesses to receive one Notice to Comply for a specific type of minor violation (e.g., open paint containers) over a 36-month period or the last three inspection cycles, whichever occurs first. Businesses can receive more than one Notice to Comply in this period if each minor violation is of a different type. A Notice to Comply provides relief from the monetary penalties. Allowing only one minor violation of a specific type within a 36-month period will not readily allow a business to relax its ongoing compliance program.

RECOMMENDATION:

AIR POLLUTION CONTROL OFFICER:

1. Consider the Initial Study and proposed Negative Declaration and adopt the Resolution adopting the Negative Declaration, making appropriate findings that: (a) the Initial Study and Negative Declaration reflect the Board's independent judgment and analysis; (b) considering the entire record before the Board, there is no substantial evidence that the proposed new Rule 6 may have a significant adverse environmental effect; (c) the Negative Declaration is adopted as a true and complete statement of potential environmental consequences resulting from proposed new Rule 6; and (d) there is no evidence in the entire record that proposed new Rule 6 will have an adverse effect on wildlife resources, and on the basis of substantial evidence, the presumption of adverse effect in California Code of Regulations, Title 14, Section 753.5(d) has been rebutted.
2. After adopting the Negative Declaration, adopt the resolution for Rule 6 and make appropriate findings:
 - (i) of necessity, authority, clarity, consistency, non-duplication, and reference as required by Section 40727 of the State Health and Safety Code;
 - (ii) that new Rule 6 will alleviate a problem and will not interfere with the attainment of ambient air quality standards (Section 40001 of the State Health and Safety Code); and

- (iii) that an assessment of the socioeconomic impact of the proposed new Rule 6 is not required by Section 40728.5 of the State Health and Safety Code because Rule 6 will not significantly affect air quality or emission limitations.
- 3. Approve the Certificate of Fee Exemption for De Minimis Impact Finding exempting the District from payment of fees to the California Department of Fish and Game.

ACTION:

Directed the Chief Administrative Officer to report to the Board in one year with information on any singular companies that have been issued more than one notices to comply, ON MOTION of Member Jacob, seconded by Member Roberts, the Members of the Air Pollution Control Board closed the Hearing and took action as recommended; and pursuant to Section 40727 of the Health and Safety Code, made the appropriate findings as presented by County Counsel, adopting the following Resolutions:

Resolution No. 99-376, entitled: RESOLUTION ADOPTING THE NEGATIVE DECLARATION FOR PROPOSED NEW RULE 6 - MINOR VIOLATIONS

Resolution No. 99-377, entitled: RESOLUTION ADDING NEW RULE 6 TO REGULATION I OF THE RULES AND REGULATIONS OF THE SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT.

AYES: Cox, Jacob, Slater, Roberts, Horn

There being no further business, the Board adjourned at 11:38 a.m.

THOMAS J. PASTUSZKA
Clerk of the Air Pollution Control Board
San Diego County Air Pollution
Control District

Notes by: Andoh

NOTE: This Statement of Proceedings sets forth all actions taken by the San Diego County Air Pollution Control Board on the matters stated, but not necessarily the chronological sequence in which the matters were taken up.